

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Center for Tobacco Products,
(FDA No. FDA-2014-H-2342)

Complainant

v.

Emin Goroveci
d/b/a Michael's Grocery and Deli,

Respondent.

Docket No. C-15-809

Decision No. CR3697

Date: March 6, 2015

INITIAL DECISION AND DEFAULT JUDGMENT

The Center for Tobacco Products (CTP) began this matter by serving an administrative complaint on Respondent, Emin Goroveci d/b/a Michael's Grocery and Deli, at 18 Van Houten Street, Patterson, New Jersey 07505, and by filing a copy of the complaint with the Food and Drug Administration's (FDA) Division of Dockets Management. The complaint alleges that Michael's Grocery and Deli impermissibly sold cigarettes to a minor, failed to verify, by means of photo identification containing a date of birth, that that a tobacco purchaser was 18 years of age or older and sold individual cigarettes, thereby violating the Federal Food, Drug, and Cosmetic Act (Act), 21 U.S.C. § 301 *et seq.*, and its implementing regulations, 21 C.F.R. pt. 1140. CTP seeks to impose a \$2,000 civil money penalty against Respondent Michael's Grocery and Deli.

As provided for in 21 C.F.R. §§ 17.5 and 17.7, on January 6, 2015, CTP served the complaint on Respondent Michael's Grocery and Deli by United Parcel Service. In the complaint and accompanying cover letter, CTP explained that, within 30 days, Respondent should pay the penalty, file an answer, or request an extension of time in

which to file an answer. CTP warned Respondent that, if it failed to take one of these actions within 30 days, the Administrative Law Judge could, pursuant to 21 C.F.R. § 17.11, issue an initial decision ordering it to pay the full amount of the proposed penalty.

Respondent Michael's Grocery and Deli has neither filed an answer within the time prescribed, nor requested an extension of time within which to file an answer. Pursuant to 21 C.F.R. § 17.11, I assume that the facts alleged in the complaint (but not its conclusory statements) are true. Specifically:

- At approximately 12:02 PM, on April 13, 2014, at Respondent's business establishment, 18 Van Houten Street, Patterson, New Jersey 07505, an FDA-commissioned inspector observed Respondent's staff selling an individual Newport cigarette to a minor. The inspector also documented that Respondent's staff failed to verify, by means of photographic identification containing a date of birth, that the purchaser was 18 years of age or older;
- In a warning letter dated June 5, 2014, CTP informed Respondent of the inspector's April 13, 2014 observations, and that such actions violate federal law, 21 C.F.R. § 1140.14(a), (b)(1) and (d). The letter further warned that Respondent's failure to correct its violations could result in a civil money penalty or other regulatory action;
- At approximately 11:10 AM, on August 12, 2014, at Respondent's business establishment, 18 Van Houten Street, Patterson, New Jersey 07505, FDA-commissioned inspectors documented Respondent's staff selling an individual Newport cigarette to a person younger than 18 years of age. The inspectors also documented that Respondent's staff failed to verify, by means of photographic identification containing a date of birth, that the purchaser was 18 years of age or older.

These facts establish Respondent Michael's Grocery and Deli's liability under the Act. The Act prohibits misbranding of a tobacco product. 21 U.S.C. § 331(k). A tobacco product is misbranded if sold or distributed in violation of regulations issued under section 906(d) of the Act. 21 U.S.C. § 387f(d); *see* 21 U.S.C. § 387c(a)(7)(B); 21 C.F.R. § 1140.1(b). The Secretary of the U.S. Department of Health and Human Services issued the regulations at 21 C.F.R. pt. 1140 under section 906(d) of the Act. 21 U.S.C. § 387a-1; *see* 21 U.S.C. § 387f(d)(1); 75 Fed. Reg. 13,225, 13,229 (Mar. 19, 2010). Under 21 C.F.R. § 1140.14(a), no retailer may sell cigarettes to any person younger than 18 years of age.

